

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12315 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

NATHUBHA RAMSINGH CHAVDA

Appearance:

1. Special Civil Application No. 12315 of 2002
MR HS MUNSHAW for Petitioner No. 1
MR MAULIK J SHELAT for Respondent No. 1
-

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 09/05/2003

ORAL JUDGEMENT

Heard learned advocate Mr. Munshaw for the
petitioner and Mr. Shelat, learned advocate for the

respondent workman. In this petition, the petitioner corporation has challenged the award dated 21st June, 2002 made by the labour court Junagadh in Reference NO. 131 of 2000 wherein the labour court has granted reinstatement with continuity of service without back wages for the intervening period. Under the impugned award, the labour court has also directed the petitioner to deduct two annual increments of the respondent workman with cumulative effect.

Rule. Service of rule is waived by the learned advocate Mr. Shelat on behalf of the respondent workman. In the facts and circumstances of the case and with the consent of the learned advocates for the parties, this petition is taken up for final hearing today itself.

It was submitted by the learned advocate Mr. Munshaw that on 2nd October, 1998 when the respondent was on duty in the bus from Porbandar to Veraval and the bus which was an express bus was checked by the checking squad between Gosa and Madhupur and it was found that the workman had not issued ticket to four passengers of one group from Gosa to Madhupur till the checking point and had also not recovered the amount of fare and during the checking proceedings, misbehaved with the checking squad and, therefore, unpunched tickets could not be recovered from the workman and the amount of fare has also not been recovered and in view of that, the workman was dismissed from service after serving him with the charge sheet. It was further submitted by the learned advocate Mr. Munshaw that in past, 26 defaults were committed by the respondent workman and though the past record was produced by the petitioner before the labour court, the labour court has granted reinstatement. According to him, in view of the bad past record, the labour court ought not to have reinstated the respondent workman in service. According to him, the punishment of stoppage of two annual increments with future effect is not enough, and some more punishment ought to have been imposed by the labour court.

As against that, learned advocate Mr. Shelat appearing for the respondent workman has submitted that the labour court has granted reinstatement in exercise of the powers under section 11A of the I.D. Act as according to the labour court, the punishment of dismissal was little but harsh and, therefore, the labour court has granted reinstatement without back wages for the intervening period while imposing punishment of stoppage of two annual increments with cumulative effect considering the misconduct alleged against the respondent

workman and also considering the past record of the respondent workman. According to him, punishment of stoppage of two increments with future effect can be considered to be the major punishment and, therefore, the award made by the labour court is just, proper and balancing award and, therefore, this court should not interfere with the award of reinstatement. He has, however, submitted that if this court feels that the punishment of stoppage of two annual increments with future effect is not enough, then, this court may pass appropriate order after considering the facts and circumstances of the case.

I have considered the submissions made by the learned advocates for the parties. According to my opinion, the labour court has considered the seriousness of the misconduct and the labour court has also concluded that there is no serious past default. The labour court was of the view that the punishment of dismissal was harsh and unjustified and therefore, it exercised the powers under sec.11A of the I.D. Act, 1947 in view of the purshis filed by the respondent workman wherein the workman has not challenged the legality, validity and propriety of the departmental inquiry and has also declared that he is foregoing the back wages for the intervening period and based upon such consideration, the labour court has made the award in question.

I have considered the submissions made by the learned advocates for the parties. I have also considered the observations made by the labour court. Since the workman has not challenged the departmental inquiry and has filed purshis before the labour court for foregoing the back wages, according to my opinion, the labour court was justified in granting the reinstatement in favour of the workman. However, in view of the seriousness of the charge of misbehaviour and improper behaviour with the checking squad due to which, the checking squad has not been able to complete the proceedings and has not been able to recover the fares from the passengers who were found without tickets and from whom fare was allegedly not recovered by the workman, I am of the opinion that the punishment of stoppage of two annual increments with future effect is not enough though it is a major punishment having recurring effect. Considering the seriousness of the charge levelled against the workman, according to my opinion, some more punishment ought to have been imposed against the workman and, therefore, to that extent, the award made by the labour court is required to be modified without disturbing the award of reinstatement in favour

of the workman. I am of the view that considering the seriousness of the charge levelled against the workman, instead of two annual increments, it would be just and proper if four annual increments of the respondent workman are ordered to be stopped with cumulative effect.

Accordingly, this petition is partly allowed.

The award dated 21st June, 2002 made by the labour court Junagadh in Reference NO. 131 of 2000 wherein the labour court has granted reinstatement with continuity of service without back wages for the intervening period with punishment of stoppage of two annual increments of the respondent workman with cumulative effect is hereby modified in so far as it relates to punishment part. Instead of two, it is directed to the petitioner to stop four annual increments of the respondent workman with cumulative effect. It is clarified that this court has not disturbed the award of reinstatement with continuity of service.

Accordingly, petitioner is directed to reinstate the respondent workman in service without any back wages for the intervening period from the date of his removal till the date of award with continuity of service with stoppage of four annual increments with cumulative recurring effect within four weeks from the date of receipt of copy of this order.

It is clarified that the workman is entitled for the regular wages for the period from the date of the award till the date of his actual reinstatement. It is, therefore, directed to the petitioner to pay regular wages to the respondent workman from the date of the award 21st June, 2002 till the date of his actual reinstatement. Rule is made absolute in terms indicated hereinabove with no order as to costs.

Dt.9.5.2003. (H.K. Rathod,J.)
Vyas